

REMARKS

This is in full and timely response to the above-identified Office Action. The above listing of the claims replaces all prior versions, and listings, of claims in the application. Reexamination and reconsideration in light of the proposed amendments and the following remarks are respectfully requested.

Claim Amendments

Claim 3 has been rewritten into independent form and claims 6, 7, 11, 17 and 19 have been amended to depend from claim 3 in independent form. Inasmuch as claims 3-5 have been indicated as containing allowable subject matter, these claim amendments are such as place claims 3-12, 17 and 19 in *prima facie* condition for allowance.

Claim 1, on the other hand, has been amended to call for each of the lateral extending upper cross-members to be provided with openings configured to receive connection devices and spaced to permit connection to at least one of a container, another shipping platform and a connection rail which interconnects containers. This amendment is submitted as distinguishing over any modification that could result from a transfer of teachings from Glassmayer to the arrangement disclosed in Betjemann. Support for this amendment is found in the specification, claims and drawings. See, for example, claims 5 and 16 and paragraphs [0023], [0024], [0026] and [0031] of the substitute specification, for example, which disclose "twist locks" as being devices which can be used as connection devices for interconnecting the platform and connection rails etc.

Rejections under 35 USC § 103

The rejection of claims 1-3, 5-7 and 9-12 under 35 USC § 103(a) as being unpatentable over Betjemann in view of Glassmayer, to the degree that it still pertains to the claims as amended, is respectfully traversed.

In order to establish a *prima facie* case of obviousness, it is necessary to show that the hypothetical person of ordinary skill would, without any knowledge of the claimed subject matter and without any inventive activity, be motivated to arrive at the claimed subject matter given the guidance of the cited references when each is fully considered as statutorily required.

In this rejection it is advanced that it would have been obvious at the time of invention to have provided laterally extending upper cross-members movable with the pillars as found in Glassmeyer "upon" the platform of Betjemann in order to (i.e. be motivated to) "provide additional strength, rigidity, synchronicity, and support to the pillars as they move."

However, the rejection lacks any indication as to where the need (viz., the motivation) for the additional strength, rigidity, synchronicity, and pillar support, is derived. The cross members 48, 50 and 72 cited in this rejection form part of a structure which allows the cross member 72 of Glassmeyer to be cranked up and down. It is clear, when making the transfer of teachings, the crank gearing and associated structure such as the angled beams 78, have been conveniently ignored and no consideration of their transfer given. The dead weight penalties on the Betjemann platform which would result from the transfer of the cited cross-members has also been ignored. That is to say, the Betjemann platform is intended to be light and air-liftable via flying crane. The undesirability of such weight penalties, which would clearly occur, would not go unnoticed by the hypothetical person of ordinary skill in the case the proposed modification to the Betjemann platform were to be considered.

The Applicant is aware that *In re Keller* (642 F.2d 413, 208 USPQ 871 (CCPA 1981)) states that "the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference, nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art." However, *In re Keller* is not an excuse to pick and choose from amongst parts of a device and just transfer selected bits and pieces to another arrangement/device disclosed in a different reference.

Indeed, a serious defect in the rejection is that relies on the use of cross member 50. As clearly shown in Fig. 3 of Glassmeyer, both cross members 50 and 72 interconnect the tops of the pillars. However, only cross member 72 is raised and lowered and cross member 50 stays where it is. The introduction of this cited member (50) into the arrangement of Betjemann would defeat the clear intent of removing all laterally extending cross-members so that the loading arrangement shown in Fig. 8 is enabled, would be limited in a manner not intended.

While cargo may be dimensioned to the degree that it may be able to pass under the cross-member 50 if used in Betjemann, it would be extremely likely, looking at Fig. 2 of Betjemann, that a forklift carrying the same would not. The masts on forklifts are quite high and since Betjemann at column 5, lines 22-27 clearly disclose the intent of using a fork lift when the gondolas are arranged in the manner shown in Fig. 8, it is submitted that the introduction of that cross member 50 would render the Betjemann arrangement at least partially inoperative for its intended purpose. It is also highly possible that the provision of the cross member 72 would have the same effect in that, even though the pillars of Betjemann are telescopic, they would not appear to be sufficiently telescopic to lift the cross member 72 to a height to where adequate forklift clearance would be provided.

"If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)." M.P.E.P. § 2143.01.

Thus, unless it can be shown that the introduction of the cited bits and pieces into the arrangement shown in Betjemann, would have no effect on the intended use of the Betjemann arrangement(s) then the rejection must be deemed untenable and withdrawn.

Conclusion

It is respectfully submitted that, for at least the reasons advanced above, that the rejected claims contain subject matter which is both novel and non-obvious over the art of record. Favorable consideration and allowance of this application is therefore courteously solicited.

Respectfully submitted,

By 

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